IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/10/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P.No. 18864 of 2002
and W.P.Nos. 18865, 41148 to 41153, 22293, 22294, 22295 to 22298,
24492 to 24497, 26437 to 26446, 32770, 32771, 34659, 34660,
35014, 35015, 35127, 40878 to 40881, 41744, 41745 of 2002,
and
523, 524, 525, 526, 3910, 3911, 4571, 4572, 8852, 8354 to 8357 of 2003
and
WPMP and WVMP Nos:60904, 60906, 60908, 60910, 60912, 60914/2002,
160 to 165/203, 25952, 25954 of 2002, 634,635/2003 30796, 30798/2002 618,
619/2003, 30800, 30802, 30804, 30806 of 2002, 614 to 617 of 2003,
336 81, 33683, 33685, 33687, 33689, 33691/2002, 620 to 625/2003,
36850, 36853,36855, 36857, 36858, 36860, 36862, 36865, 36866,
36869/2002, 794 to 803 of 2003, 48752, 487542002 626, 627 of 2003, 51664,
51666/2002, 262,263/2003, 52136, 52138/2002, 260,261/2003, 52256/2002,
264/2003, 60536, 60538, 60540, 60542/2002, 628 to 630, 632/2003 61718,
61720/2002, 631, 633, 625,627, 629,631,4927, 4929, 5794, 5795,
11337, 10696, 10698, 10699 and 10702 of 2003

W.P.No:18864 of 2002

Dindigul Spinners Association
(Regn No:330/97)
No.27-28, Matha Buildings,
main Road, Dindigul 624 001
rep. By its Secretary
Dr.P.Periathambi. ..Petitioner

-Vs-

1. The Secretary to Govt.,
Govt., of Tamil Nadu
Energy Department
Fort St. George
Chennai-9

2. The Chief Electrical Inspector to Govt.,
Thiru Vika Industrial Estate
Guindy, Chennai-32

3. Tamil Nadu Electricity Regulatory Commission
rep. By its Chairperson,
Seethammal Colony, Alwarpet
Chennai-18. ..Respondents

Writ Petitions preferred seeking for the relief of writ of certiorari to quash G.O.Ms.No:30 and 31, Energy (B.1) Department dated 1.4.2 002 issued by the first respondent as stated therein.

!For petitioners: Mr.R.Thiagarajan,S.C.,
Mr.R.S.Pandiaraj,
Mr.Palani Selvaraj,
Mr.Kamalanathan,
Mr.Sivanandham,

For Respondents: Mr.N.R.Chandran,
Advocate General,
Mr.R.Raghupathy,
Additional Government Pleader
Mr.N.Srinivasan, for
Tamil Nadu Electricity
Regulatory Commission.

:COMMON ORDER

In these batch of writ petitions either the Association or the individual writ petitioners challenge the Notifications issued by the Government of Tamil Nadu in

(1) GO (MS)No: 30 Energy (B.1) Dept., dated 1.4.2002
(2) GO (MS)No: 31 Energy (B.1) Dept., dated 1.4.2002

The said two Notifications were issued by the first respondent, Secretary to Government of Tamil Nadu, Energy Department simultaneously and the petitioners have prayed for quashing of both the Government Notifications.

2. It may not be necessary to refer to the details of the petitioner or petitioner associations as it has not bearing nor any special point has been raised in respect of the particular petitioner or petitioner association. Further no objections have been raised by the respondents as to the maintainability of the writ petitions by the association.

3. The petitioners are consumers of High Tension Electricity and they are subjected to periodical inspection by the Electrical Inspectorate in terms of Rule 46(1)(a) as well as Rule 63 of the Indian Electricity Rules, 1956. For such inspections, hitherto the rate of inspection fees were collected as fixed in terms of Rule 7 (2) and 46(2) (a) of the Indian Electricity Rules 1956. By the impugned Government Orders, the rate of fees have been increased

to the tune of 300% and above, besides fixing different periodicity of inspection for different connections under Rule 46. According to the petitioner the many fold increase on and after 31.3.2003, is arbitrary, and such increase has been notified in violation of principles of natural justice without affording an opportunity or without hearing the consumers or without publishing a preliminary notification and calling for objections from the consumers or trade. It is alleged that hitherto it has been the practice to publish a preliminary notification at the first instance calling for objections or suggestions before revising the rate of inspection fee and after considering the objections or representations the State Government used to issue the notification. Such was being the practice and it was in conformity with the principles of natural justice. In violation of the same, the sudden increase has been notified by increasing the rates of fees to several hundred times.

4. It is contended that there is obligation on the part of the respondents to afford an opportunity and this failure vitiates the notifications. It is further pointed out that directing annual inspection and payment of annual fees is not contemplated by the Rule 46 and by the impugned Notifications annual inspection has been made compulsory and as a matter of routine when such annual inspection is not a mandatory requirement.

5. It is pointed out that the inspections are only ceremonial inspections in nature as the entire installation of High Tension is being installed or erected only under the strict control and supervision of qualified engineers or certified license holders for such installations. It is claimed that every Electricity consumer appoints a qualified Electrical Engineer of its own who possess C Certificate issued by the Chief Electrical Engineer to the Government and they are only maintaining the High Tension electrical installations. That apart APTS (Anti Power Theft Squad) is making periodical inspection regarding theft, unauthorised installation, electrical safety etc., Besides very many engineers from the Electricity Board also periodically inspect the High Tension installations. Therefore fixing an annual inspection is not only repetitive in nature but it does not serve any new purpose and totally unwarranted and uncalled for. Notifications are contrary to Rule 46 (1)(a) which envisages such periods on an intervals of not exceeding five years. Therefore the direction to have annual inspection as a mandatory one runs counter to Rule 46 (1)(a) and the consequential imposition of annual fee is also illegal and arbitrary and it is a compulsory extortion of a huge sum in the guise of inspection fees.

6. It is contended that there is no nexus between the enhanced fee revising the periodicity of inspection as one year under the impugned Notifications and the objectives of such inspection and the inspections which are only ceremonial in nature and the sole object being earning revenue or motive being to extract more money from the High Tension Consumers like the petitioners. It is a gross violation of principles of natural justice and the impugned Government Orders are liable to be quashed. There is no justification for the exorbitant increase of fees by the impugned Notifications. Further there could be an inspection once in five years, but making annual inspection compulsory subject to payment of annual fees is

arbitrary and runs counter to the statutory rule 46. Therefore the impugned Notifications in so far as it makes it compulsory to have annual inspection and subject to payment of annual inspection of fees is arbitrary and runs counter to the statutory rule.

7. It is contended that the Government Orders were issued in violation of principles of natural justice. It is further contended that the impugned G.Os were issued by the first respondent without jurisdiction after coming into force of the Tamil Nadu Electricity Regulatory Commission notified in the Electricity Regulation Commission Act, 1998. It is further pointed out that the services rendered is only minimal and there is no quid-pro quo Even the existing rate of fee will not withstand the scrutiny of quid pro quo, not to speak of 30 0 to 400% in revision of rates. Therefore the impugned orders are unfair, arbitrary, offends Art.14 of The Constitution.

8. It is further contended that there is no nexus between the enhanced fee imposed, revising the periodicity of the inspection as one year and the objectives of such inspections as the inspections are only ceremonial in nature and the Government Orders obviously meant to extract more money or more revenue from the High Tension Electricity consumers like the writ petitioners or the members of the petitioner associations as the case may be. Hence the present writ petitions.

9. A common counter affidavit has been filed on behalf of the first and second respondent. The third respondent has just adopted the counter affidavit filed by the first respondent. According to the first respondent, the Electrical Inspectorate Department functions under the Administrative control of the Energy Department of Government of Tamil Nadu. The Chief Electrical Inspector is the Head of the Department under whom senior Electrical Inspectors, Assistant Electrical Inspectors and Junior Electrical Inspectors function. Section 36 of the Indian Electricity Act, provides for appointment of Electrical Inspectors. Rule 4(A) provides for appo intment of officers to assist the Inspectors. Rule 7 (2) of the Electricity Rules confers power on the State Government to levy such fees for testing and inspection and revise the same from time to time by a general or special order or remit any portion of the fees as the S tate or Central Government may deem it. Rule 46 of the Indian Electricity Rule 1956 provides for periodical inspection and testing of installations. Rule 46(1)(a) provides for inspection and testing of consumers' installations at intervals not exceeding five years. By the impugned G.O (Ms)Nos.31 Energy (B.1) Department, dated 1.4.2002, the State Government has made inspection of the consumers installations to be periodical in respect of various class of consumers. In respect of High and extra High Voltage consumers the installations have to be inspected once in a year, medium voltage consumer installations once in three years and low voltage consumer installations once in five years. Rule 63 of the Rules makes provision with respect to electric supply lines, systems and apparatus for high and extra high voltage and very many services have to be performed by Electrical Inspectorate who inspect from time to time and conduct tests. The inspection is not ceremonial as sought to be alleged. Rule 63 contemplates approval of high voltage and extra high voltage installations by Electrical Inspectorate.

10. The respondent has set out the nature of functions discharged by the Chief Electrical Inspector and the stages or process of approval as hereunder:-

"18. The designer, namely the Professional Engineer and the Customer desire to ensure whether their proposal meets the requirements of:-
a. Indian Electricity Rules, 1956,
b. Wiring Regulations specified in the National Electrical Code issued by Bureau of Indian Standards
c. Compliance of Indian Standard Specifications in electrotechnical field issued by the Bureau of Indian Standards.
And hence the customer for his own interest requires the services of the Chief electrical Inspectorate to scrutinise, check up the drawing proposal, and to offer technical opinion/remarks of the drawing proposal. This service is rendered to the person who requests the same even though such a service is not statutorily contemplated in Rule 63 of the Indian Electricity Rules; of course such a service is done only after payment of service charges in accordance with the rates specified in Sections I to VI of Schedule III of the G.O.Ms.No.30 Energy (B,1) Dept., dated 1st April 2002, which is in supersession of the orders containing the rates for such services in G.O.Ms.NO.2501, PWD, dated 7.12.1989.The current rates of fees prescribed is nominal, compared to the expenditure involved towards the establishment for technical staff and other paraphernalia for this purpose, building up of infrastructure of technical library containing books of Indian Standards, International electro technical Commission Standards in electro technical field, books in electrical engineering technology, and books in other allied fields of engineering, Journals and Periodical Publications relating to electrical industry. If the customer/ Professional Engineer does not desire the Chief Electrical Inspectorate to scrutinise, check up the drawing proposal and get technical opinion, and they themselves are confident that the statutory requirements are fulfilled in their design, they have rights to skip this first stage and step in to the second stage of the process of approval under Rule 63 of Indian Electricity Rules 1956, detailed below.
19. The second stage of the process of approval under Rule 63 of Indian Electricity Rules 1956 is detailed below:
The customer engages an electrical contractor licensed under subrule (1) of Rule 45 of Indian electricity Rule, 1956, the Selections of contractors are made by the customer and his Professional consultants. The quantity surveyor of the designer of electrical installation measures the quantities of labour and material necessary to complete the electrical installation work; the size and quantity of all the materials, cables, control equipment's and accessories are determined, and called "bill of quantities". The electrical contractor completes the electrical installations work to the appropriate standards or the agreed cost.
20. As the erection of electrical installation progresses, it often becomes necessary due to constrains faced during the practical erection of the electrical works to modify the positions of certain equipments indicated on the layout drawings and /or to change the feeder/ final circuit arrangements indicated in the single line distribution drawings; thus the original intentions of the designer get changes. Hence, when the installation is completed, a set of drawings, indicating the final positions of all electrical

equipment and final electrical distribution arrangement with all electrical data incorporated in the drawings are produced and they are called as fitted drawing. Initial inspection and testing report for the fitted completed electrical installation is produced to the Electrical Inspector along with treasury receipt for having paid the fees for inspection and testing in accordance with scale of fees prescribed in the Schedule I in G.O. Ms.No.30 Energy (B.1) department dated 1.4.2002. The general practice of according approval in writing under Rule 63 of Indian Electricity Rules 1956 is based on inspection and checking the compliance of the provisions of Indian Electricity Rules by Electrical Inspectorate Department Officers; also provisional approval in writing under Rule 63 of Indian Electricity Rule, 1956 are also accorded pending inspection, based on the completion certificate and test report of the licensed Electrical Contractor and his competency Certificate holder; inspection is carried out post approval under Rule 63 of Indian Electricity Rules, 1956.

11. With respect to issue of approval in terms of Rule 63 of the Rules, the procedures have been elaborated by the respondent in the following words:

a. On-site check inspection, and to carry out tests
or
b. To accord provisional approval in writing under Rule 63 of Indian Electricity Rule, 1956 is based on the Completion Report and Test Report of the licensed Electrical Contractor and the client, permanent approval is accorded after carrying out inspections at a later date along with other inspection programme in that area considering the administrative convenience.

12. It is contended that Rule 7(2) of the Rules enables the State Government to levy such fees for testing and inspection and generally for the services of the inspectors or officers appointed to assist the Inspectors as of made from time to time by general or special orders, direct.

13. It is claimed that sub rule (2) of Rule 7 empowers the State Government to levy fees for testing, inspection and generally for the services of inspectors or any officers appointed to assist the inspector from time to time. By general or special order, the State Government has to fix the levy of such fees for testing and inspection and generally for the services of electrical Inspectors by the impugned G.O.Ms.No:30, Energy (B.1) Department dated 1.4.2002.

14. Rule 46(2)(a) confers powers to determine the fees for such inspection and testing as may be determined by the State Government. In exercise of such powers, G.O.Ms.No:31, Energy (B.1) Department, dated 1.4.2002 has been issued fixing the rates of fees for such inspections and testing. By the impugned Government Orders the Government has revised the rates of fees for inspection and testing with effect from 1.4.2002 in supersession of the earlier notifications which were in force since 12.8.1987. The Government also issued orders revising the periodicity of inspection and testing of

consumer installations with effect from 1.4.2002 in supersession of the earlier orders issued on 12.8.1987.

15. In para 28 of the Counter affidavit, the Government has compared the scale of inspection fee for periodical inspections under Rule 46 of the rules which was in force prior to 1.4.2002 and the new rates which came into force on 1.4.2002 in respect of medium voltage, High Tension voltage and various other installations and it is pointed out that the increase is not many fold as sought to be contended.

16. It is pointed out that in terms of Section 38 only before introduction or amendment of rules, a publication has to be made and after considering the representations or objections the rule has to be made. Such publication is required by giving three months notice. Section 37 contemplates publication of rules in the Gazette published by the Government of India. The Central Electricity Board is the rule making authority who is also the competent authority to amend the rules. It is claimed that from time to time levy of rates of inspection fees have been varied either under Rule 7(2) or under Rule 46(2) and at no point of time there was a previous publication inviting objections as alleged and such an averment is incorrect.

17. The contention that there must be some correlation between the fees fixed and the services rendered in return for it is untenable. The rates of inspection fees revised by the respondent State Government is more or less the same as to the rates of inspection fees fixed by the Government of India and the Government of Karnataka. Such revision has been notified strictly in accordance with the Rule 7 (2) and 46(2) of the Rules. The revision is not arbitrary. It is further stated that revised rates of inspection fee has been fixed taking into consideration of the following points:-

"The old rates were fixed 14 years and 7 months before and thereafter there has been a general increase in the cost of things due to increase in the salary of officers and other staff in the establishment of Electrical Inspectorate due to implementation of revises scales of pay recommended by the Pay Commissions after 1987, increase of Dearness Allowance, increase of Traveling Allowance etc., Before fixation of fee, correlation between the fee fixed and the services rendered in return for it was taken into consideration; however it was also taken note that it is not practically possible that the levy shall have direct correlation to the actual services rendered in each case to an individual called upon to pay; however, it is ensured that the same type of service is rendered to all persons."

18. It is pointed out that period inspections of High and Extra High Tension voltage consumer installations inclusive of their medium and low voltage installations once in a year was ordered in the year 1963 and since then the same has been in force. The practice of periodical inspection once in a year was not objected to by the High voltage and extra high voltage consumers from the year 1963 and the grievance expressed in this respect is without any basis.

19. It is claimed that various arrangements have been made including

training, conducting examinations and licensing A-Grade, BGrade or C-Grade contractors or licensees which involve lot of expenditure. The Tamil Nadu Electrical Licensing Board was constituted for the grant of certificate of competency to wireman and supervisors and licensers, electrical contractors in terms of Rule 38 of the Indian Electricity Rules. The respondent has elaborated the nature of job executed by electrical contracting industry. The respondent has also detailed the role played by professional electrical technicians or Engineers in the design, installation or erection of installations in various type of industries or domestic buildings or commercial buildings as the case may be. The Electrical Contractors are expected to carry out the work only in accordance with the specifications of Standards and Bill of Quantity in the contract.

20. The details of procedure namely the submission of application with diagrams and various provisions in terms of the existing rules have been indicated in para 51 and 52 of the counter affidavit. The respondent has also detailed the electrical loads installed in each factory and the requirement of a qualified person who is in charge of electrical installations or generation or transmission or transformation, conversion, distribution or use of energy. The rules also provide for appointment of an authorised person by the management of the factory for ensuring observation of the safety provisions as contemplated in the Electricity Act and the Rules.

21. Various avermnets set out in the affidavit have been denied. Rule 5 of the Electricity Rules provide for entry and inspection and the purpose of inspection either by Assistant Engineer or Executive Engineer or Superintending Engineer or by the Chief Engineer of the Tamil Nadu Electricity Board to check the compliance of terms and conditions of Supply, taking meter reading of the electrical consumption etc., The consumer is obliged to pay fees for the inspection and testing by any person as and when they receive the services. The inspection fees are not exorbitant and the levy is reasonable and more so when the revision has been made after 14 years and 7 months. It is contended that periodicity of inspection once in a year is not revised and periodicity of inspection once in a year is existing from the year 1963 and the same is being continued. The rates of fee fixed is reasonable. They are neither arbitrary, nor excessive. The fee fixed by the impugned G.Os is fair and reasonable and no interference is called for. The periodicity of inspection has not been revised for the first time, but it has been in existence since 1963 and such annual inspection once in a year is continued as was done hitherto. The practice of periodical inspection once in a year was not objected to by the High voltage and extra High Voltage consumer from the year 1963 and it was taken for granted that the consumers are satisfied with the procedure so far adopted or periodicity of inspection. The petitioners are estopped by their conduct in this respect. The respondents have prayed for dismissal of these writ petitions while submitting that both the impugned G.Os are legally sustainable and they are not liable to be interfered by this court.

22. Heard Mr. R.Thiagarajan, learned senior counsel appearing for Mr.R.S.Pandiaraj, Mr.Palani Selvaraj, Mr.Kamalanathan, Mr.Sivanandham, learned counsel appearing for the petitioners Mr.N.R.Chandran, learned Advocate

General assisted by Mr.R.Raghupathy, learned Additional Government Pleader for respondents 1 and 2 in all the writ petitions and Mr.N.Srinivasan, learned counsel appearing for the third respondent- Tamil Nadu Electricity Regulatory Commission in all the writ petitions.

23. The points that arise for consideration in these batch of writ petitions are:-

(1) Whether the levy of inspection fees in terms of the Indian Electricity Act and the Rules is regulatory in nature or a fee collected for the services rendered warranting quid pro quo?

(2) Whether the procedure followed in the revision of rates and periodicity of inspection are violative of principles of natural justice and not in conformity with the Indian Electricity Rules 1956?

(3) Whether the fee or charges for inspection of Electrical Installations is excessive or disproportionate to the services rendered and liable to be quashed as arbitrary and offending Art.14?

(4) Whether the rate of fees fixed for investigation and inspection for evaluation of electrical undertakings or for any inspection, examination as revised by G.O.Ms.No.30 Energy (B.1) Department dated 1.4.2002 is liable to be quashed as one not authorised by law, arbitrary and offends Art.14 of The Constitution?

(5) Whether the fees fixed for the inspection in terms of clause (a) of sub rule (2(of Rule 46 of the Indian Electricity Rules as detailed in Schedule and appended to G.O.Ms.NO.31, Energy (B.1) Department, dated 1.4.2002 is liable to be quashed as arbitrary or excessive, expropriatory, offends Art.14 of The Constitution?

(6) Whether G.O.Ms.No.31, Energy (B.1) Department, dated 1.4.2002 fixing the periodicity of inspection of the consumers installations runs counter to the provisions of the Indian Electricity Act or the Rules framed thereunder and liable to be quashed as illegal, arbitrary?

(7) To what relief if any the petitioners are entitled to?

24. Mr.R.Thiagarajan, learned senior counsel appearing for all the petitioners leading the arguments heavily relied upon the pronouncement of the Supreme Court in Krishi Upai Mandi Samithi Vs. Orient Paper Industries Ltd., reported in 1995 (1) SCC 655 as well as the pronouncement in Indian Express Newspapers (Bombay) Pvt., Ltd., V. Union of India, reported in AIR 1986 SC 515 in support of his contention, while Mr.Palani Selvaraj, learned counsel heavily relied upon the pronouncement of the Supreme Court in Neelima Misra Vs. Harinder Kaur Paintal, reported in AIR 1990 SC 1402 in support of his contention that the notifications have been issued without following the procedure prescribed and in violation of the principles of natural justice and thus the petitioners' valid right has been arbitrarily interfered.

25. Per contra, the learned Advocate General contended that the fees is regulatory in nature and therefore the question of quid proquo need not be tested nor it is required to be tested, that the notifications issued are in conformity with the Indian Electricity Act and the Rules framed thereunder and there is no scope for interference. Much reliance is placed by the learned Advocate General on the pronouncement of the Supreme Court in Vam Organic Chemical Ltd, Vs. State of U.P., reported in 1997 (2) SCC 715, B.S.E. Brokers' Forum Vs. SEBI, reported in 2001 (3) SCC 482 and State of Uttar Pradesh Vs. Sitapur Packing Wood Suppliers and others, reported in 2002 (4) SCC 56 6.

26. Before taking up the points for consideration it is essential to refer to the material provisions of the Act the Rules and the salient features of the Indian Electricity Act and the Rules as well as the Electricity (Supply) Act.

27. Indian Electricity Act, 1910 is an Act mainly deals with Supply and use of Electrical Energy came into force on 1st January of 19 11 and has been amended from time to time. Section 2 is the definition section. Part II of the Act provides for supply of energy by licensees and grant of licenses besides Part II provides for transmission of energy. Part III provides for supply, transmission and use of energy by non licensees. Part IV provides for general protection clauses and penalties for various offences. Section 37 and 38 and proviso thereof confers power on the rule making authority to frame necessary rules. A Schedule is appended to the Act in terms of Section 3(2) and Clause (f) and the Schedule is deemed to be incorporated with and it form part of every license granted under Part II. We are not concerned with the grant of license under Section 3.

28. The Electricity (Supply) Act, is an Act enacted to provide for the rationalisation of the production and supply of electricity and generally for taking measures conducive to electrical development. Chapter II of the Act provides for Central Electricity Authority while Chapter III provides for State Electricity Boards, Generating Companies, State Electricity Consultative Councils and Local Advisory Committees. Chapter IV provides the powers and duties of State Electricity Boards and Generating Companies. Chapter V provides for the works and trading procedure of the Board and the Generating Companies. Chapter VI provides for Boards, finance, accounts and audit and Chapter VII provides for Miscellaneous. Nine Schedules are appended to the Electricity (Supply) Act, 1948. We are also not concerned with the details of the same, nor we are concerned with the Electricity Boards, Supply or Generation or transmission and supply of power to consumers like the petitioners in these batch of writ petitions.

29. In terms of Section 37 of The Indian Electricity Act, 1910, the Central Electricity Board has framed the Rules. The same having been previously published as required by Sub Section (1) of Section 38 of the said Act. Chapter II of the Indian Electricity Rules, 1956 provides the qualifications, appointments, entry or inspection, amount of fee for inspection, list of consumers. Chapter III provides for grant of licenses, application and grant of licenses and the qualifications thereon. Chapter IV

relates to general safety requirements. Chapter V relates to general conditions relating to supply and use of energy. Chapter VI provides for electrical supply line system and apparatus for low and medium voltages. Chapter VII provides for electrical supply lines system and apparatus for high and extra high voltages. Chapter VIII provides for over head lines, underground cables and generating stations. Chapter IX provides for electrical tractions. Chapter X provides for additional precaution taken by the Mines and Oil fields. Apart from that there are 15 Annexures and seven appendixes to the Rules which also form part of the Rules.

30. It would be sufficient to refer to the statutory provision and rules which are relevant for the purpose of this batch of writ petitions. Section 37 of the Indian Electricity Act confers powers on the Central Electricity Board to make Rules for whole or any part of the territory to which the Act extends to regulate generation, transmission, supply and use of energy and generally to carry out the purposes and objects of the Act. Section 37(2) (k) confers power on the Central Electricity Board. Clause (k) which is relevant is extracted hereunder:-
37. Power of Board to make rules--
(1) xxxx
(2) In particular and without prejudice to the generality of the foregoing power, such rules may,--
(a) xx xxx xxx
(k) authorise and regulate the levy of fees for any such testing or inspection and, generally, for the services of Electrical Inspectors under this Act and
(i) provide for any matter which is to be or may be prescribed.

31. Sub section (3) of Section 37 mandates that rules made in pursuance of Clauses (e) to (j) of sub section (2) shall be binding on the Government. In other words, Section 37 confers power on the Central Electricity Board to make Rules to regulate generation, supply and use of energy and carry out the objects of the Act. The Rules have been published on 26th June, 1956. The Model conditions of supply of Electricity framed under section 37 are akin to Model standing orders prescribed by Industrial employment (Standing Orders) Act, 1946, as has been held by the Supreme Court in AIR 1996 SC 2214 (Bihar State Electricity Board Vs. Parameshwar Kumar Agarwal).

32. Section 38 provides that Rules under Section 37 shall be subject to conditions of the Rules being made after previous publication. Sub section (2) of Section 38 provides for publication of drafts in terms of Section 23 of the General Clauses Act, 1897 and representations if any received shall be taken into consideration. Sub section (3) also contemplates the Rules being placed before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and in case the Houses not agree it shall be modified. In other words, Rules made under section 37 shall come into force forthwith but subject to such modified form as the case may be.

33. In terms of Section 37(1) of the Indian Electricity Rules, 1956,

Rules have been framed. Sub Rule (2) of Section 7 confers power on the Central or the State Government as the case may be to levy such fee for testing and inspection and generally for the services of the Inspectors or any officers appointed to assist the Inspectors as it may from time to time by general or special order direct.

34. G.O.Ms.No:30, Energy (B.1) Department, dated 1.4.2002 has been issued in exercise of powers conferred under sub rule (2) of Rule 7 which has enabled the State Government to revise the rates of fees for testing and inspection and generally for the services of the Inspectors appointed under the Act and the Rules.

35. Rule 46 provides for periodical inspection and testing of installations already connected to the supply system be it High voltage or extra High voltage or low voltage or medium voltage connections. Sub rule (1)(a) of Rule 46 provides for inspection and testing of electrical installations periodically at intervals not exceeding five years either by the Inspector or any officer appointed to assist the Inspector or by the Supplier as the case may be directed by the State Government in this behalf. Clause (aa) of Rule 46(1) provides for periodical inspection and testing of High voltage and extra High Voltage installations at intervals not exceeding five years by the Inspector.

36. Sub rule (2) of Rule 46 enables the State Government to increase the rates of fees for such inspection and test in the case of each class of consumers and the same shall be payable by the consumers in advance. The Central Government is also authorised to determine the fees. In the event of failure of any consumer to pay the fees on or before a date specified in the

fee notice, supply to the installation of such consumer shall be liable to be disconnected under the directions of the Inspector after giving seven days notice.

37. Rule 63 provides for approval of the installation by the Inspector of various varieties of installations before energising or getting supply and the supply of energy shall not be commenced by the supplier unless and until the Inspector is satisfied that the provisions of Rules 65 to 69 have been complied with and the approval in writing of the Inspector has been obtained by him. Very many technical details have been provided for in the said Chapter VII and various precautions have been stipulated.

38. The material portion of the Rule will be extracted when the particular point is taken up for consideration as the interpretation of the Rule is also the subject matter in these batch of writ petitions.

39. The statutory provisions of the Indian Electricity Act and the rules framed thereunder are regulatory in nature in that it provides for various stipulations and conditions and protective measures since electrical energy is by itself dangerous. Electrical Energy could be used only by adopting such standards and specifications of the transmission lines or

installations or machineries. High standards have been prescribed in this respect. Therefore the provisions of the Electricity Act and the Rules framed thereunder are regulatory in nature as has been rightly pointed out by the learned Advocate General.

40. Taking up the first point for consideration, in the light of the provisions of the Indian Electricity Act and the Rules framed thereunder, it is clear that the levy is regulatory in nature and it is not a simple levy of fees based upon mere service alone. The quid pro quo is necessary only if the fees is compensatory in nature and not when it is regulatory.

41. The pronouncement of the Supreme Court in State of U.P., and others Vs. Sitapur Packing Wood Suppliers and others reported in 200 2 (4) SCC 566 has been rightly relied upon by the learned Advocate General. Y.K.Sabarwal,J., speaking for the Bench held thus:-

"8. The distinction between tax and fee is well settled and need not be restated herein. It is clear from the afore-noticed provisions of the Act and the Rules that the transitory fee is regulatory in nature. The question of quid pro quo is necessary when a fee is compensatory. It is well established that for every fee quid pro quo is not necessary. The transit fee being regulatory, it is not necessary to establish the factum of rendering of service. Thus, there is no question of a levy of transit fee being invalidated on the ground that quid pro quo has not been established.
9. In State of Tripura v. Sudhir Ranjan Nath almost similar question came up for consideration in relation to the State of Tripura. It was held that Sections 41 and 76 of the Act vest total control over the forest produce in the State Government and empower it to regulate the transit of all timber or other forest produce for which purpose the State Government is also empowered to make the Rules. The decision of the High Court invalidating the levy of application fee in the said case on the ground that the State had not established that the services were rendered in lieu of the said fee, was reversed by this Court holding that the fee was regulatory and not compensatory. Reference may be made to the decision in the case of Corpn. of Calcutta v. Liberty Cinema wherein it was held that the expression licence fee does not necessarily mean a fee in lieu of services and in case of regulatory fee no quid pro quo need be established. Following Liberty Cinema case similar views have been expressed in Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn. and P. Kannadasan v. State of T.N."

42. In the present case also Section 37 which is the rule making provision confers power on the Central Government to make rules to regulate, supply and use of engery and generally to carry out the purposes and objects of the Act. Section 37 reads thus:-

37.POWER OF BOARD TO MAKE RULES:-
(1) The Central Electricity Board may make rules, for the whole or any part of the territories to which this At extends to regulate the generation, transmission, supply and use of energy, and, general, to carry out the purposes and objects of this Act.
(2) In particular and without prejudice to the generality of the

foregoing power, such rules may,--
(a) Prescribe the form of applications for licenses and he
payments to be made in respect thereof;
(b) Regulate the publication of notice;
(C) Prescribe the manner in which objections with reference to any
application under Part II are to be made;
(d) Provide for the preparation and submission of accounts by
licensees in a specified form;
(e) Provide for the securing of a regular, constant and sufficient
supply of energy by licensees to consumers and for the testing at various
parts of the system of the regularity and sufficiently of such supply, and for
the examination of the records of such tests by consumers;
(f) Provided for the protection of persons and property from
injury by reason of contract with, or the proximity of, or by reason of the
defective or dangerous condition of, any appliances of apparatus used in the
generation, transmission, supply of use of energy;
(g) for the purposes of electric traction regulate the employment of
insulated returns or of uninsulated metallic returns of law resistance, in
order to prevent fusion or injurious electrolytic action or or on metallic
pipes, structures or substances, and to minimise as far as is reasonably
practicable, injurious interference with the electric wires, supply-lines and
apparatus of parties other than the owner of the electric traction system, or
with the current therein, whether the earth is used as a return or not;
(h) Provide for preventing telegraph lines and magnetic observatories
or laboratories from being injuriously affected by the generation,
transmission, supply or use of energy;
(i) Prescribe the qualifications to be required of Electrical
Inspectors;
(j) authorise any Electrical Inspector or other officer of a
specified rank and class to enter, inspect and examine any place, carriage or
vessel in which he has reason to believe any appliances or apparatus used in
the generation, transmission, supply or use of energy to be, and to carryout
test therein, and to prescribe the facilities to be given to such Inspectors
or officer for the purposes of such examinations and tests;
(k) authorise and regulate the levy of fees for any such testing
or inspection and, generally, for the services of Electrical Inspections under
this Act; and
(l) provide for any mater which is to be or may be prescribed
(3) any rules made in pursuance of clauses (e) to (j) both
inclusive) of sub section (2) shall be binding on the government.
(4) In making any rule under this Act, the Central Electricity
Board may direct that every breach thereof shall be punishable with fine which
may extend to three hundred rupees, and in the case of a continuing breach,
with a further daily fine which may extend to fifty rupees."

43. In terms of Section 37 detailed Rules have been prescribed and
this court holds that the entire provision of the Indian Electricity Act and
the Rules framed thereunder are regulatory in nature. Fees stipulated to be
collected for inspection or for test or for giving the certificate as the case
may be under various rules are regulatory. It is not necessary to establish
the factum of rendering services. It is not necessary to establish quid pro

quo since the fees levied is regulatory in nature and it is not compensatory.

44. In Vam Organic Chemicals Ltd,. Vs. State of U.P. And others reported in 1997 (2) SCC 715, A.M.Ahmadi,C.J., as he then was speaking for the Bench while following the earlier pronouncements held that in case of regulatory fee like the license fees the existence of quid pro quo is not necessary although the fee imposed must not be in the circumstances of the case excessive.

45. The Supreme Court in Corporation of Calcutta Vs. Liberty Cinema reported in AIR 1965 SC 1107 laid down that in fact, in our Constitution fee of license and fee for services rendered are contemplated as different modes of levy. The former is not intended to be a fee for services rendered. This is apparent from the consideration of Art.110(2) and Art. 199(2) where both the expressions are used indicting thereby that they are not the same.

46. In State of Tripura Vs. Sudir Rajan Nath, reported in 1997 (3) SCC 665, the Supreme Court after analysing the earlier case law in particular, AIR 1965 SC 1107 (Corporation of Calcutta Vs. Liberty Cinema), 1997 (2) SCC 715 (Vam Organic Chemicals Ltd. Vs State of U.P)and 1997 (2) SCC 727 (Bihar Distillery Vs. Union of India) held that the fees levied being regulatory in nature, the test of quid pro quo will not arise at all, nor it is required for the State to establish quid pro quo.

47. The attention of this Court is drawn to the judgment of Natarajan, J., (as he then was) in M/S.DOJRAJ TEXTILE MILLS LTD., MADURAI VS. THE ELECTRICAL INSPECTOR, MADURAI & OTHERS reported in VOL. 92 LW 26 6. The learned Judge, while dealing with the question relating to the fixation of fees under Rule 46 (1)(a) had taken the view that there has to be some correlation between the fee fixed and the services rendered in return for it, however indirect the correlation may be. The learned Judge further held that as material is not forthcoming in that case, the petitioner's contention has to be sustained and the increased inspection fee based on the rules contained in the impugned G.O. has to be struck down so far as the petitioner is concerned. In other words, the learned Judge has taken the view it is a compensatory fees and the respondent has to establish quid pro quo. The learned Judge has relied upon the pronouncement of the Supreme Court in SRIRAMULU VS. THE REGISTRAR, HIGH COURT, MADRAS, reported in 88 LW 181 and had taken such a view.

48. It is rightly pointed out by the learned Advocate General, the pronouncement in Sriramulu's case has since been reversed by the Supreme Court in SECRETARY TO GOVT. OF MADRAS VS. SRIRAMULU, reported in 1996 (1) SCC 345. The pronouncement in CHIEF COMMISSIONER, DELHI VS. DELHI CLOTH AND GENERAL MILLS LTD., it is pointed out has since been overruled. This Court finds that the view taken by Natarajan, J., (as he then was) is no longer good in law in view of the later pronouncement of the Supreme Court, wherein identical fees have been held to be regulatory in nature and, therefore, the principle of quid pro quo will not arise. The Supreme Court in STATE OF U.P. VS. SITAPUR PACKING WOOD SUPPLIERS reported in 2002 (4) SCC 566 laid down that the question of quid pro quo is necessary when fees is compensatory and for other

fee, quid pro quo is not necessary. The Supreme Court further held that the fee being regulatory, it is not necessary to establish the factor of rendering service and, therefore, levy of transfer fee in that case, it was held, cannot be invalidated on the ground that quid pro quo has not been established. In other words, the pronouncement being that fee is regulatory, it is not necessary for the State to establish quid pro quo.

49. The view of Natarajan, J., (as he then was), is no longer good since the developments in the branch of law being that licence fee may be either regulatory or compensatory, when fees is charged for rendering specific service, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. The Supreme Court further held that this is not the only kind of fee which can be charged and licence fee could also be regulatory with the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity could be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fee is not required although such fees cannot be excessive. This is the pronouncement of the Supreme Court in SECUNDERABAD HYDERABAD HOTEL OWNERS' ASSOCIATION VS. HYDERABAD MUNICIPAL CORPORATION reported in 1999 (2) SCC 274.

50. So also in A.P. PAPER MILLS LTD. VS. GOVERNMENT OF A.P. reported in 2000 (8) SCC 167, levy of licence fee depending upon the installed horse power and number of persons employed in the factory for the purpose of licence being to supervise, regulate and monitor the activities relating to factories, with the object of proper enforcement of statutory provisions, it has been held that licence fee is a regulatory fee and quid pro quo is not available to such fee. In this respect, the Supreme Court held thus:-

"31) Taking a similar view this Court in the case of Secundrabad Hyderabad Hotel Owners' Assn. Vs. Hyderabad Municipal Corporation held that licence fee collected by municipalities for running a lodging house, hotel, restaurant, coffee house, tea stall, eating house, soft drink stall, cafeteria, tiffin room, etc., is a fee and not a tax; and further that the fee being regulatory existence of an element of quid pro quo is not necessary for levying such fee albeit such fee cannot be excessive. The distinction between the two types of fees, fee which is regulatory and fee for services rendered was expressed by this Court in paras 9 and 12 which are quoted hereunder (SCC pp.282 & 284)
"9. It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a

tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.
* * * *
12. In the present case, however, the fees charged are not just for services rendered but they also have a large element of a regulatory fee levied for the purpose of monitoring the activity of the licensees to ensure that they comply with the terms and conditions of the licence. Dealing with such regulatory fees, this Court in Vam Organic Chemicals Ltd. Vs. State of U.P. observed that in the case of a regulatory fee, no quid pro quo was necessary but such fee should not be excessive. The same distinction between regulatory and compensatory fees has been made in the case of P.Kannadasan Vs. State of T.N. as well as State of Tripura Vs. Sudhir Ranjan Nath."
32. From the conspectus of the views taken in the decided cases noted above it is clear that the impugned licence fee is regulatory in character. Therefore, stricto sensu the element of quid pro quo does not apply in the case. The question to be considered is if there is a reasonable correlation between the levy of the licence fee and the purpose for which the provisions of the Act and the Rules have been enacted/framed. As noted earlier, the High Court has answered the question in the affirmative. We have carefully examined the provisions of the Act and the Rules and also the pleadings of the parties. We find that the High Court has given cogent and valid reasons for the findings recorded by it and the said findings do not suffer from any serious illegality. It is our considered view that the licence fee has correlation with the purpose for which the statute and the rules have been enacted."

51. In COMMISSIONER & SECRETARY TO GOVERNMENT, COMMERCIAL TAXES & RELIGIOUS ENDOWMENTS DEPARTMENT & OTHERS VS. M/S.MURUGAN FINANCING CORPORATION & OTHERS reported in 1992 (3) SCC 488 = AIR 1992 SC 1383, the levy of audit fees was the subject matter of challenge as excessive and there is no quid pro quo. The Division Bench of the High Court sustained the contention, but the Supreme Court reversed the same. The Supreme Court held thus :-

"This Court in several judgments over a period of 40 years has authoritatively crystalised the contradistinction between "tad" and "fee". The judgments of this Court in Commr. Of Hindu Religious Endowments, madras vs. Shri Lakshmindra Thirthya Swamiyar, 1954 SCR 1005 : (AIR 1954 SC 282); H.H.Sudhandara Vs. Commr. F or Hindu Religious and Charitable Endowments, (1963) Suppl. 2 SCR 302 : (AIR 1963 SC 966); Hindir Rampur Coal Co. Ltd. Vs. State of Orissa, (1961) 2 SCR 537 : (AIR 19 61 SC 459); H.H.Swamiji Vs. Commr., Hindu Religious and Charitable Endowment Department, (1980) 1 SCR 368 : (AIR 1980 SC 1); and Southern Pharmaceuticals and Chemicals, Trichur Vs. State of Kerala, (1982) 1 SCR 519 : (AIR 1981 SC 1863) were considered by this Court in Municipal Corporation of Delhi Vs. Mohd. Yaseen, (1983) 2 SCR 999 : (AIR 198 3 SC 617), wherein the Court speaking through Chinnappa Reddy,J., held as under (at pp. 620-21 of AIR) :-
"What do we learn from these precedents ? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of tax-payers whereas a fee is a payment for services rendered, benefit provided or privilege conferred, compulsion is not the hall-mark of

the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct; a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc., against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax."

52. In B.S.E. BROKERS FORUM VS. SECURITIES & EXCHANGE BOARD OF INDIA reported in 2001 (3) SCC 482, the Supreme Court held that there has been a sea change in the judicial thinking as to the difference between a tax and fee and the traditional concept of quid pro quo not a fee has undergone considerable transformation and so far as the regulatory fee is concerned, the services to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. In that context, the Supreme Court held thus :-

"30) This Court in the case of Sreenivasa General Traders Vs. State of A.P. has taken the view that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. This Court said that in determining whether a levy is a fee or not emphasis must be on whether its primary and essential purpose is to render specific services to a specified area or class. In that process if it is found that the State ultimately stood to benefit indirectly from such levy, the same is of no consequence. It also held that there is no generic difference between a tax and a fee and both are compulsory exactions of money by public authorities. This was on the basis of the fact that the compulsion lies in the fact that the payment is enforceable by law against a person in spite of his unwillingness or want of consent. It also held that a levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It also held that the element of quid pro quo in the strict sense is not always a sine qua non for a fee, and all that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. That judgment also held that the earlier judgment of this Court in Kewal Krishan Puri Vs. State of Punjab is only an obiter.
31) In the case of City Corporation of Calicut Vs. Thachambalath Sadasivan this Court reflected the change that is taking place in the judicial thinking as to the difference between a tax and a fee. It held that the traditional

concept of quid pro quo in a fee is undergoing transformation, though the fee must have relation to the services rendered, or the advantages conferred, it is not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee is being paid. It held that if one who is liable to pay rec eives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied."

53. In BSE Brokers Forum case, the earlier pronouncement in 1992 (3) SCC 488, namely, COMMISSIONER & SECRETARY TO GOVERNMENT, COMMERCIAL TAXES & RELIGIOUS ENDOWMENTS DEPARTMENT & OTHERS VS. M/S.MURUGAN FINANCING CORPORATION & OTHERS has been affirmed.

54. As already pointed out the entire provisions of the Electricity Act and the Rules framed thereunder are regulatory and fees levied for grant of license or inspection of installations or for issue of safety certificates are clearly regulatory in nature and the point has to be answered accordingly. In respect of the first point, this court holds that the fee fixed in terms of Rule 7(2) and Rule 46(2) by the two impugned Notifications are regulatory in nature and the question of quid pro quo will not arise at all and it is not germane.

55. In the counter affidavit details have been set out as to the various functions of the Electrical Inspectorate, its activities, the procedure adopted and various tests being conducted and the elaborate procedures or standards prescribed or required to be adopted by the Consumers and supplier and the enforcement thereof by the Electrical Inspectorate. Therefore the enforcement of the provisions of the Act and the Rules being regulatory in nature, the levy of fees also is regulatory. In the present case rates of fees cannot be held to be excessive or arbitrary. The report submitted by the Chief Electrical Inspector to the Government would speak volumes and there is justifiable reasons for enhancement of the fees as well besides it is being revised after fourteen long years. This court is not persuaded to hold that the increase in fees is arbitrary or shockingly disproportionate. Further, the Schedule of fees compared to neighbouring States and Central Authority are al on par and this demonstrate that the rates of fees is neither excessive nor arbitrary.

56. In the circumstances, on the first point this court holds that the inspection fee or testing fee or other fees/charges as levied under the Electricity Rules as notified or revised by the impugned Notifications for the inspection and/or testing of the electrical installations are fair and being regulatory in nature it is not necessary to establish quid pro quo. Accordingly, on points 3 and 4 as well this court holds that the revision of fees is neither arbitrary, nor it offends Art.14 nor the rate of fees fixed for inspection and evaluation of electrical undertakings or for any inspection/ examination as revised by the impugned G.Os 30 and 31 are liable to be quashed as illegal or arbitrary or violative of Art.14 of The Constitution. Hence Points 1,2,3,4 and 5 are answered in favour of the respondents and against the petitioners.

57. Rule 46 (1)(a) provides for periodical inspection of electrical installation at intervals not exceeding five years. Rule 46 (1)(a) provides that such installation shall be inspected and tested by the Inspector. The said rule further provides inspection and testing either by the Inspector or any officer appointed to assist the Inspector or by the supplier as may be directed by the State Government in this behalf.

58. On a reading of the said rules it is clear that the Inspector appointed under the Act has to inspect and test the installation at intervals not exceeding five years. Further, the State has been authorised to appoint any officer to assist the Inspector. It is also open to the State to direct the supplier in this behalf to inspect and test the installation. From the above what the Rule provides for or flows from Rule 46 (1)(a) are :-

"i) Installation already connected to the supply system of the supplier shall be periodically inspected and tested ;
ii) Such inspection and testing shall be at intervals not exceeding five years ;
iii) Inspection and testing shall be by the Inspector appointed under the Act ;
iv) In the alternative inspection shall be by any officer appointed to assist the Inspector ;
v) The State Government may also direct the supplier to inspect in this behalf ; and
vi) In the case of installations belonging to or under the control of the Central Government or in the case of mines, oil fields or Railways, by the Central Government."

59. Therefore it follows that in terms of Rule 46 (1)(a), the State Government, if at all, could, by a direction direct any officer appointed or the supplier to assist the Inspector as may be directed to cause inspection and testing. The State Government has no authority either to modify any portion of Rule 46 (1)(a) or the State Government has the authority to restrict the inspection or testing or increase or restrict the periodicity of testing nor it could classify the installations for the purpose of testing for inspection as the case may be.

60. Rule 46 (1)(aa) has been added by Indian Electricity Amendment Rules, 2000 and published in the Gazette of India dated 25th November, 2000, which sub-clause also just provides for periodical inspection and testing of high voltage and extra high voltage installations belonging to supplier at intervals not exceeding five years by the Inspector. However, we are not concerned with this sub-clause in the present case.

61. This portion of the impugned notification is being challenged as running counter to Rule 46 (1)(a). The portion of the Rules reads thus :-
"Under clause (1) of sub rule (1) of rule 46 of The Indian Electricity Rules, 1956, and in supersession of all the previous orders on the subject, the Governor of Tamil Nadu hereby directs that the consumer's installation specified in column (2) of the Table below shall be periodically inspected as specified in corresponding entry relating thereto in column (4) thereof.

Serial Number
(1)
Details of consumer's installation
(2)
Persons authorised to inspections
(3)
Periodicity

(4)
1
High and Extra High Voltage consumer installations inclusive of their medium and low voltage installation
Electrical Inspectorate headed by Chief electrical Inspector to Government
Once in a year
2
Medium voltage consumer's installation
Supplier
Once in three years
3
Low voltage consumer's installation
Supplier
Once in five years

62. A reading of the above portion of the notification would show as if the State Government has been conferred with the power under clause (a) of sub-rule (1) of Rule 46 of The Indian Electricity Rules, 19 56, to alter or rewrite or amend or after the said rule. As already pointed out, the only power that has been conferred under clause (1) of sub-rule (1) of Rule 46 is that the State Government may by direction direct any officer appointed to assist the Inspector or the supplier to inspect and test the installation. In other words, in addition to the Inspector, who has been conferred with the power to inspect or test the installation, the State Government may confer authority on any officer appointed to assist the Inspector to inspect and test the installation, which is already connected to the supply system of the supplier. The State Government is not conferred with any power further beyond this.

63. From the portion of the impugned notification extracted above, what the State Government has directed is the high and extra high voltage consumer installation shall be inspected once in a year, medium voltage consumer installation shall be inspected by the supplier once in three years and low voltage consumers installation shall be inspected by the supplier once in five years. In other words, there is a restriction with respect to the periodicity of inspection.

64. It may be that the State Government may be well within its power in directing the Electrical Inspector or the supplier to be the authorised person to inspect. Rule 46 (1)(a) makes no distinction with respect to consumer installation as high and extra high voltage or medium or low voltage installations, while clause (aa) of Rule 46 (1)(a) alone makes a difference between high voltage or extra high voltage and that too in respect of

installation belonging to supplier not in respect of consumers installation. No disti nction has been made by the rule making authority under Rule 46 (1)(a) in respect of consumers installation. It may be that the classification may have an objective, but Rule 46 (1)(a) makes no difference or distinction in respect of the classification of consumers installation as high and extra high voltage or medium voltage or low voltage for being inspected with periodicity.

65. Rule 46 (1)(a) provides that every installation shall be periodically inspected and tested at intervals not exceeding five years. Such periodical inspection is common to all types of installations, be it high or extra high or medium or low voltage installations of the consumers.

66. The expression "not exceeding five years" used in Rule 46 (1)(a), according to the learned Advocate General would mean that inspection and testing could be once in a year as well or at such interval as the inspecting authority decides on the facts of each case. Per contra, it is contended that such inspection shall be carried out periodically, but there shall be a gap not exceeding five years between one inspection and another inspection. However, in my considered view, there could be one or more such inspection within a period of five years in respect of consumers installations irrespective of voltage on such as the Inspector decides.

67. If the interpretation placed by the learned Advocate General is accepted, even then, the impugned portion of the notification cannot be sustained. When Rule 46 (1)(a) prescribes the periodicity of inspection, as "at intervals not exceeding five years", the direction to inspect once in a year in respect of high and extra high voltage or once in three years compulsorily in respect of medium voltage or once in five years in respect of low voltage consumers installation would mean the State Government is rewriting Rule 46 (1)(a). The State Government is not the rule making authority in terms of Section 37 of The Indian Electricity Act. The State Government has no power except by a direction authorise a substitute an authority in the place of the Inspector to inspect and test and it has no further authority. By the above impugned portion of the notification, as already pointed out, the State Government has practically rewritten Rule 46 (1)(a), which is beyond the authority conferred by the Rule.

68. When the Act prescribes a particular body or officers to exercise a power, it must be exercised by that body or officer and none else, unless the Act by express words or necessary implication permits the delegation, in which event it may also be exercised by the delegatee, if the delegation is made in accordance with the terms of the Act, but not otherwise. In the present case the State Government could exercise the functions which it is enjoined upon under Rule 46(1)(a) to be exercised by other officer and no further power could be inferred on the State Government to meddle with Rule 46(1)(a). The State Government if at all could delegate or substitute the authority in the place of the Inspector and such functionary shall be treated for all intends and purposes as an Officer authorised to test or inspect in the place of inspector. This is the scope or direction if at all the State

Government could issue in terms of Rule 46(1)(a) and nothing further.

69. What has been conferred on the State Government is to substitute an officer to inspect and nothing more. Taking up the case of low voltage consumers installation, assuming that a difference could be made on the basis of voltage, the direction by the State Government would amount to the periodicity of inspection of such low voltage consumers installation shall be done once in five years. In other words, there shall be a minimum gap of five years between one inspection and another inspection, while Rule 46 (1)(a) provides for inspection at intervals not exceeding five years. This would mean that the State Government has rewritten Rule 46 (1)(a). So also in the case of medium voltage consumers installation, the direction to inspect once in three years would amount to rewriting Rule 46 (1)(a) as well. Equally the same reasons applies in case of high and extra high voltage consumer installations.

70. At the risk of repetition, it has to be pointed out that what the State Government has been authorised is to direct or empower a substitute in the place of the Inspector or in addition to the Inspector to inspect or test the installation and nothing more.

71. It should not be forgotten that whenever there is an inspection, the fees has to be paid in advance as has been stipulated by Rule 46 (2)(a). Therefore, by increasing the periodicity of inspection, the burden on the consumers is increased and it is an indirect imposition of fee by the State, which is not permissible under rule 46 (2)(a). If there is a failure to pay the fees, then the consequences will be, supply to the installation of such consumer shall be disconnected under the direction of the Inspector, after issue of seven clear days notice in writing. For the annual inspection, the implication means the consumer has to pay the fees annually. It may be that a discretion is given to the Inspector to inspect periodically at intervals not exceeding five years and the Inspector or the substitute so appointed by the Government may in his discretion inspect or test the installation at such interval as it may deem fit for reasons he deems fit. Further, there cannot be an inspection every month or every quarter or every year, which would mean that inspection is done at the whims and fancies of the Inspector. That is no t the purport or scope of the rule. The rule being regulatory, though the object being to test and inspect the installation in the interest of the consumer as well as the public, there cannot be repeated inspections or testing and heavy or onerous liability cannot be fastened on the consumer in the guise of inspection.

72. As already pointed out, Rule 46 (1)(a) makes no distinction between high and extra high voltage or medium voltage or low voltage consumer and no such classification is indicated or provided for in Rule 46 (1)(a). Though the classification is a valid piece, rule 46 (1)(a), which provides for inspection and testing makes no such difference, nor it is contemplated.

73. It is also to be pointed out that excepting the substitution of the authority or authorising another authority in addition to the Inspector to

inspect and test, no other power has been conferred on the State Government under Rule 46 (1)(a). There is no delegation of power under Section 37 of The Electricity Act to amend or alter the rules on the State Government. The State Government is not the rule making authority nor it could claim any incidental or supplemental powers to issue such direction as it may deem fit to enforce the rules.

74. In the circumstances, the following portion of the Government Order insofar as it is contrary to Rule 46 (1)(a) cannot be sustained and has to be consequently declared as unenforceable as not authorised by Rule 46 (1)(a). The remaining portion of the Notification being severable, is valid in law and not liable to be invalidated.

75. One another point to be examined is whether before issuing the impugned notification, an opportunity has to be afforded to the consumers or whether the rules contemplate publication of draft notification and inviting objection or representations. It is contended by the learned counsel for the petitioners that before issuing the impugned notification, there has been no preliminary publication inviting objections or representations and without following the procedure prescribed in this respect, the impugned notification has been issued. It is also contended that by the issue of impugned notification, altering the earlier schedule of rates, the valuable rights of the petitioners have been taken away and the same is in violation of principles of natural justice. It is also contended that such alteration or amendment has been effected by straightway issuing the impugned notification without following the procedure prescribed under The Electricity Rules, 1956.

76. A delegated legislation could be impugned as invalid as violative of the enabling Act or Rules or it is contrary to statutory provisions or that it is so arbitrary that it cannot be said to be in conformity with the statute, or Article 14 of The Constitution. The delegated Legislation cannot be questioned for violating principles of natural justice in its making excepting when the statute itself provides such a requirement. The Statutory power so delegated may be both quasi legislation and quasi administrative and when it is exercised quasi legislation, the requirement of natural justice being followed will not arise.

78. In State of U.P., Vs. Renusagar Power Company, reported in AIR 1988 SC 1737, at page 1761, the Supreme Court held thus:-

"75.....Price fixation, in our opinion, which is ultimately the basis of rise in cost because of the rise of the electricity duty is not a matter for investigation of court. This question was examined by this Court in Union of India v. Cynamide India Ltd where one of our learned brothers who delivered the judgment of the High Court of Allahabad was a party. There in exercise of the powers under Section 3(2)(c) of the Essential Commodities Act, the Drugs (Prices Control) Order, 1 979 was made. The Central Government thereafter issued notification thereunder. At page 741 of the report, Chinnappa Reddy, J. speaking for the court referring to a passage of Administrative Law by Schwartz with approval expressed the view that those powers were more or less

legislative in character. Fixation of electricity tariff can also to a certain extent be regarded of this category . Chinnappa Reddy, J. observed at page 735 of the report that price fixation is more in the nature of a legislative activity than any other. He referred to the fact that due to the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is ' difficult in theory and impossible in practice'. Reddy J. insisted that it is necessary that the line must sometimes be drawn as different legal right and consequences may ensue. It appears to us that subsection (4) of Section 3 of the Act in the set up is quasi-legislative and (quasi-administrative insofar as it has power to fix different rates having regard to certain factors and insofar as it has power to grant exemption in some cases, in our opinion, is quasi-legislative in character. Such a decision must be arrived at objectively and in consonance with the Principles of natural justice. It is correct that with regard to the nature of the power under Section 3(4) of the Act when the power is exercised with reference to any class it would be in the nature of subordinate legislation but when the power is exercised with reference to individual it would be administrative. Reference was made in this connection to the cases of Union of India v. Cynamide India Ltd. and P. J. Irani v. State of Madras."

79. The question whether principles of natural justice applies to the exercise of power of conditional legislation was considered by the Supreme Court in Jalan Trading Company Vs. Mill Mazdoor Sabha, reported in AIR 1967 SC 691. The Supreme Court held thus:-

"20) By Sec.36 the appropriate Government is invested with power to exempt an establishment or a class of establishments from the operation of the Act, provided the Government is of the opinion that having regard to the financial position and other relevant circumstances of the establishment, it would not be in the public interest to apply all or any of the provisions of the Act. Condition for exercise of that power is that the Government holds the opinion that it is not in the public interest to apply al or any of the provisions of the Act to an establishment or class of establishments, and that opinion is founded on a consideration of the financial position and other relevant circumstances. Parliament has clearly laid down principles and has given adequate guidance to the appropriate Government in implementing the provisions of S.36. The power so conferred does not amount to delegation of legislative authority. Section 36 amounts to conditional legislation, and is not void. Whether in a given case, power has been properly exercised by the appropriate Government would have to be considered when that occasion arises. 21)But S.37 which authorises the Central Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act, in our judgment, delegates legislative power which is not permissible. Condition of the applicability of S.37 is the arising of the doubt or

difficulty in giving effect to the provisions of the Act. By providing that the order made must not be inconsistent with the purposes of the Act, S.37 is not saved from the vice of delegation of legislative authority."

80. The power conferred on the State Government to notify the rates of inspection and testing either under Rule 7(2) or under Rule 46 (2)(a) is in the nature of conditional legislation and the power exercisable being legislative in character, the rule of audi alteram partem will have no application. The exercise of power either under Rule 7(2) or under Rule 46(2)(a) does not require observance of the principles of natural justice. A reading of the said rules also do not contemplate exercise of power by the State on objective facts being placed or being referred to or considered.

81. In Tulsipur Sugar Company Vs. Notified Area Committee, Tulsipur, reported in AIR 1980 SC 882 at page 887, after considering the position the Supreme Court enunciated the legal position thus:-

"Section 3 does not provide that the State Government should give previous publicity to its proposal to declare any area as a town area and should make such declaration after taking into consideration any representation or objection filed in that behalf by the members of the public. Nor section 3 of the Act by necessary implication imposes a duty on the State Government to follow the principles of natural justice i.e.,to give publicity to its proposal to declare any area as a town area and to decide the question whether any declaration under Section 3 of the Act should be made or not after taking into consideration the representations or objections submitted by the members of the public in that regard. Therefore, the failure to comply with such procedure would not invalidate any declaration made under Section 3. The power of the State Government to make a declaration under Section 3 is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declarat ion. Section 3 of the Act is in the nature of a conditional legislation. The maxim "audi alteram partem" does not become applicable to the case by necessary implication."

82. There is nothing to show that the State Government which has been conferred with the power of subordinate legislation has exceeded the limits of authority conferred by the Rule. It cannot be stated that the delegatee State Government has neither exceeded the authority or has issued a Notification with respect to the revision of rates inconsistent with the Rules.

83. In deciding upon the validity of the Notifications, this court has a threefold task. They are: (i) to determine the meaning of words used in the Act of Parliament itself to describe the subordinate legislation which the authority is authorised to make; (ii) to determine the meaning of the subordinate legislation itself; and (iii) to decide whether the subordinate legislation complies with that description.

84. It is also equally well settled that once if we start with the presumption that the subordinate Legislation is ultra vires and if on a

consideration two construction are possible, one of which would make it "would alone" has to be adopted. When part of the subordinate legislation is ultra vires that part alone could be declared so, then the remaining portion of the Rule or Notification would be enforced or exercised in conformity with the Rule under which it has been made. Rules made under the Statute are treated for the purpose of constructions as if they were in the enabling Act and are to be of the same effect as if contained in the Act itself.

85. This contention cannot be sustained in law and it is a misconception on the part of the counsel for the petitioners. As already discussed above, the State Government has no authority to frame the rules nor Section 37 has conferred power on the State Government to frame the rules or amend the Rules. Under Section 38, procedure has been fixed for framing of the rules under Section 37. The authority to frame the rules is not the State Government, but it is the Central Board. The State Government is not the rule making authority. Therefore, it is not necessary to follow the procedure prescribed under Section 38 of The Indian Electricity Act.

86. As already pointed out, the State Government is not the delegated authority to frame the rules, but The Indian Electricity Rules confer power on the State Government to appoint electrical inspector or such other officer to exercise the powers of Electrical Inspector or authorise the supplier to conduct testing. So also the State Government has been conferred with the power to fix the rates of inspection fees. Neither Rule 7 (2) nor Rule 46 (2)(a) contemplates an opportunity being offered to the consumers while fixing the fees for inspection and testing.

87. Rule 7 (2) confers power on the State Government to levy such fees for testing and inspection for the service of the Inspectors as it may from time to time by general or special order direct. So also in terms of Rule 46 (2)(a), the fees for such inspection and test shall be determined by the State Government or the Central Government as the case may be in the case of each class of consumers. A reading of the said rule do not contemplate affording an opportunity or publishing a draft notification, entertaining objections and, thereafter, notifying the rates or determining the rates. The contention that there is violation of principles of natural justice also cannot be sustained.

88. In the result, on the first point, this court holds that the levy of inspection fee is regulatory in nature. On the second point, this court holds that the procedure followed for revision of rates for inspection of installations is not violative of principles of natural justice. On the third point, this court holds that the fees or charges for inspection of electrical installations is not excessive or disproportionate and not liable to be quashed as arbitrary and offending Art.14. On the fourth point is also answered against the petitioners and in favour of the respondent. Sixth point is answered against the respondents and in favour of the writ petitioners. The following portion of the G.O.Ms.No.31, Energy (B.1) Department, dated 1.4.2 002 is declared illegal and quashed:-

"Under clause (1) of sub rule (1) of rule 46 of The Indian Electricity Rules,

1956, and in supersession of all the previous orders on the subject, the Governor of Tamil Nadu hereby directs that the consumer's installation specified in column (2) of the Table below shall be periodically inspected as specified in corresponding entry relating thereto in column (4) thereof.

Serial Number (1)	Details of consumer's installation (2)	Persons authorised to inspections (3)	Periodicity (4)
1	High and Extra High Voltage consumer installations inclusive of their medium and low voltage installation	Electrical Inspectorate headed by Chief electrical Inspector to Government	Once in a year
2	Medium voltage consumer's installation	Supplier	Once in three years
3	Low voltage consumer's installation	Supplier	Once in five years

89. The remaining portion of the Notification which is severable is declared valid.

90. In the result, the writ petitions are allowed in part only to the portion of the Notification extracted above and in other respects, the Notification is held valid.

91. Consequently all the connected WPMPs and WVMPs are dismissed. The parties shall bear their respective costs.

Index:Yes
Internet: Yes

gkv/gln

To

1. The Secretary to Govt.,
Govt., of Tamil Nadu
Energy Department

Fort St. George
Chennai-9

2. The Chief Electrical Inspector to Govt.,
Thiru Vika Industrial Estate
Guindy, Chennai-32

3. Tamil Nadu Electricity Regulatory Commission
rep. By its Chairperson,
Seethammal Colony, Alwarpet
Chennai-18.